



**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

(petitioner)  
(petitioner's address)

DECISION

MDV-60/43603

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**PRELIMINARY RECITALS**

Pursuant to a petition filed February 25, 2000, under Wis. Stat. §49.45(5) and Wis. Adm. Code §HA 3.03(1), to review a decision by the Taylor County Dept. of Human Services in regard to a divestment, a hearing was held on May 25, 2000, at Medford, Wisconsin. A hearing scheduled for April 12, 2000 was rescheduled at the petitioner's request.

The issue for determination is whether the petitioner divested funds when she sold her house to her son for less than its fair market value.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

(petitioner)

Represented by:

Attorney Paul Sturgul  
312 Silver Street  
Hurley, WI 54534

Wisconsin Department of Health and Family Services  
Division of Health Care Financing  
1 West Wilson Street, Room 250  
P.O. Box 309  
Madison, WI 53707-0309

By: Jeanne Vesnefsky, ESS  
Taylor County Dept Of Human Services  
540 E. College Street  
Medford, WI 54451-2027

**EXAMINER:**

Michael D. O'Brien  
Administrative Law Judge  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner (SSN xxx-xx-xxxx, CARES #xxxxxxxxxx) resides in a nursing home in Taylor County.
2. The petitioner entered the hospital in January 1998.

3. The petitioner was discharged from the hospital on January 12, 1998.
4. While she was at home after being discharged from the hospital, her son provided for her needs, which allowed her to live outside of nursing home.
5. The petitioner had a stroke on January 16, 1998 and was forced to return to the nursing home.
6. The petitioner's son had lived in her home for more than two years before January 16, 1998.
7. The petitioner's son who lived with her purchased her home for \$32,000 in November 1999.
8. The value of the home purchased by the petitioner's son was \$65,000.
9. The county agency denied medical assistance eligibility to the petitioner because it determined that sale of her house was a divestment.

### **DISCUSSION**

The question here is whether the petitioner divested property when she sold her house, which was appraised at approximately \$65,000, to her son for \$32,000. A divestment occurs when a Medical Assistance applicant, or person acting on the applicant's behalf, transfers assets for less than fair market value during the lookback period. The lookback period is generally 36 months before a person enters an institution. §49.453(1)(f), Wis. Stats. If there is a divestment, the applicant is ineligible for Medical Assistance for a period based on the amount divested and the cost of nursing home care. This law is meant to prevent persons with enough funds to pay for their own medical care from becoming a burden to the general public by passing their assets to potential heirs. An exception to the divestment rule is allowed when a child has lived for two years with a parent who later became institutionalized, and the child provided care that allowed the parent to remain at home rather than go into a nursing home. §HFS 103.065(4)(b)4, Wis. Admin. Code, *MA Handbook*, Appendix, §14.4.0. Whether there was a divestment here depends upon whether the petitioner's son meets this exception. I find that he does.

The parties agree on all but one of the relevant facts. They agree that the petitioner and her son had lived together in her house for many years. In January she got sick and entered the hospital until January 12, 1998. She was home for only four days before suffering a stroke that caused her to need permanent institutional care. The parties also agree that the exception to the divestment rule should be interpreted so that the requirement that the petitioner's son lived with her for two years and the requirement that he cared for her are separate. This means that the son has to show only that he cared for her during part of the time he lived with her, and not for at least two years. I am skeptical of this interpretation because I believe it can lead to manipulation. However, I have not found any law to contradict the parties' interpretation. Further, it is based on a literal reading of the language of the regulation. Finally, Division of Hearings and Appeals decisions do not bind future Division decisions or agencies in other similar matters. Therefore, I will accept the interpretation of the parties in this matter. The sole disputed fact is whether the son's aid during the narrow window between January 12 and January 16, 1998 kept the petitioner out of the nursing home until she suffered her stroke.

The Medical Assistance regulations require a notarized statement from the recipient's physician or others that states that the recipient would have entered a nursing home if not for the care of the child. *Id.* The petitioner's attorney provided three such affidavits, but the county agency did not accept them as proof. *See Exhibits 1, 2, and 3.* I understand the county's reluctance to rely upon the affidavits because they appear to be little more than a recitation of the law drafted by an attorney who then brought them to the

affiants and said, "Sign this." But the petitioner did provide other evidence at the hearing that proves its point. A hospital discharge note dated January 12, 1998 stated that the petitioner needed assistance for activities of daily living and ambulation. *Exhibit 4*. The son testified that he cooked his mother's supper, had her breakfast ready for her before he went to work, and gave her insulin shots. (Other family members were available if she needed help during the day.) The petitioner and her daughter confirmed this testimony. Taken together, the testimony, the hospital note, and the affidavits establish that the son's aid kept the petitioner out of the nursing home for the four days between the time she left the hospital and she suffered a stroke. Therefore, the sale of the house was not a divestment that renders the petitioner ineligible for medical assistance.

Although not relevant for this decision, I note that the petitioner's son did not profit from the reduced price of the house. The Division of Hearings and Appeals found the petitioner ineligible for medical assistance in an earlier decision when she did not file an appeal on time. This left her owing approximately \$33,000 to the nursing home. The son paid this debt when he purchased his mother's house.

### **CONCLUSIONS OF LAW**

The petitioner did not divest funds when she sold her house to her son for \$32,000.

**NOW, THEREFORE, it is** **ORDERED**

That this matter be remanded to the county agency with instructions that within 10 days of the date of this decision it certify the petitioner as eligible for medical assistance retroactive to the date she met all other eligibility requirements.

### **REQUEST FOR A NEW HEARING**

This is a final fair hearing decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a new hearing. You may also ask for a new hearing if you have found new evidence which would change the decision. To ask for a new hearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875.

Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST."

Your request must explain what mistake the examiner made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

Your request for a new hearing must be received no later than twenty (20) days after the date of this decision. Late requests cannot be granted. The process for asking for a new hearing is in sec. 227.49 of the state statutes. A copy of the statutes can found at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed no more than thirty (30) days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

Appeals for benefits concerning Medical Assistance (MA) must be served on Department of Health and Family Services, P.O. Box 7850, Madison, WI, 53707-7850, as respondent.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for Court appeals is in sec. 227.53 of the statutes.

Given under my hand at the City of  
Madison, Wisconsin, this \_\_\_\_\_ day  
of \_\_\_\_\_, 2001.

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Michael D. O'Brien  
Administrative Law Judge  
Division of Hearings and Appeals  
26/MDO

cc: TAYLOR COUNTY DEPT OF HUMAN SERVICES  
DHFS - Susan Wood  
Attorney Paul . Sturgul-